

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

_____)	
THE BERKSHIRE GAS COMPANY)	D.T.E. 04- 38
PRE-APPROVAL OF ENERGY EFFICIENCY)	
PROGRAMS AND RECOVERY OF ENERGY)	
EFFICIENCY RELATED COSTS)	
_____)	

SETTLEMENT AGREEMENT

The Berkshire Gas Company ("Berkshire" or "Company"), Settlement Intervention Staff ("SIS") appointed by the Department of Telecommunications and Energy ("Department"), the Division of Energy Resources ("DOER") and the Low-Income Weatherization and Fuel Assistance Network, the Massachusetts Community Action Program Directors Association, Inc. and the Low-Income Energy Affordability Network ("LEAN") (collectively the "Low-Income Intervenors") hereby agree, as provided herein and subject to approval of the Department, to resolve all issues relating to the Company's request for pre-approval of residential and commercial and industrial ("C&I") energy efficiency and market transformation initiatives. The Company, SIS, DOER and the Low-Income Intervenors are collectively referred to as the "Settling Parties."

I. BACKGROUND

The Company currently operates comprehensive energy efficiency programs and market transformation initiatives targeting the residential and C&I customer sectors. These programs are operated pursuant to the Settlement Agreement approved in The Berkshire Gas

Company, D.T.E. 01-29 (August 10, 2001) ("D.T.E. 01-29 Settlement") and extended on an interim basis by the Department's April 21, 2004 approval of the Company's Motion for the Interim Continuation of Existing Energy Efficiency Programs ("Interim Extension") filed on March 26, 2004. The D.T.E. 01-29 Settlement built upon the energy efficiency programs developed and approved in the Company's previous demand-side management ("DSM") settlements: The Berkshire Gas Company, D.P.U. 91-154 (October 6, 1992) ("D.P.U. 91-154 Settlement"); The Berkshire Gas Company, D.P.U. 94-168 (August 21, 1995) ("D.P.U. 94-168 Settlement"); The Berkshire Gas Company, D.P.U. 96-92 (December 20, 1996) ("D.P.U. 96-92 Settlement"); and The Berkshire Gas Company, D.T.E. 98-93 (May 17, 1999).

The Company's pre-approval request in D.T.E. 04-38 was made by means of the filing of an Initial Petition along with detailed supporting testimony and materials on March 26, 2004 (the "March 26, 2004 Filing"). Said filing provided the information required for DSM program extensions as set forth by the Department in the proceedings in Colonial Gas Company, D.P.U. 94-105 (1994), as well as the general information required by the Department for the pre-approval of DSM programs. See generally Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U. 89-242/246/247 (1990). By the Department's Order of Notice dated April 29, 2004, a deadline of May 20, 2004 was set for petitions seeking intervention or participation and a public hearing was scheduled for June 3, 2004. Other than SIS, which was appointed by the Department on June 2, 2004, the DOER (which filed a Petition to Intervene on May 20, 2004) and the Low-Income Intervenors (who filed a Petition to Intervene on May 20, 2004) were the only parties to have sought intervention or participation in the proceedings. After the public hearing on June 3, 2004, the Settling Parties had several discussions. The Settling

Parties have now reached this Settlement for which they seek the Department's approval. In reaching this Settlement, the Settling Parties seek to allow for the continuation and enhancement of the Company's energy efficiency and market transformation efforts in a manner that responds to the needs of all of the Company's customers, including hard-to-reach low-income customers, that increases the efficiency of gas used in the Company's service territory, and that is appropriate to the competitive natural gas marketplace. The Settling Parties anticipate that energy efficiency programs and market transformation initiatives will continue to serve an important role as the gas marketplace evolves, but this Settlement only addresses the Pre-Approval Period (as defined below).

II. TERMS OF SETTLEMENT

A. Residential Energy Efficiency Programs. The Company's proposed residential energy efficiency programs (consisting of: (1) the Non-Low-Income Residential Program, (2) the Low-Income Residential Program and (3) the Multifamily/Rental Program), as well as residential market transformation efforts described in more detail in Section II.C below), as set forth in the Company's March 26, 2004 Filing are approved for operation during the five year period commencing May 1, 2004 and ending April 30, 2009 (the "Pre-Approval Period"). In order to implement the Low-Income Program, the Company will continue to coordinate its efforts with the non-profit, weatherization assistance program agencies in its service territories as set forth in the March 26, 2004 Filing and provide two percent (2%) of its low-income expenditures to LEAN in order to provide coordination and program services benefiting the Company's low-income customers.

The total amount of expenditures which are pre-approved for recovery for the five-year Pre-Approval Period for the Company's residential energy efficiency programs, inclusive of market transformation efforts, shall be \$2,517,371. A summary of these expenditures for each of the residential programs agreed upon by the Settling Parties is included in Exhibit One. Exhibit One A contains certain enhancements to the Company's March 26, 2004 Filing with respect to low-income programs that the Settling Parties agree to implement upon the Department's approval of this Settlement. Such enhancements do not result in changes to the low-income budgets set forth in the Company's March 26, 2004 Filing, but do entail certain new measures and reflect current prices based upon a competitive RFP process run and overseen by the Department of Housing and Community Development.

- B. C&I Energy Efficiency Programs. The Company's proposed C&I energy efficiency programs (including the Small and Medium C&I Program, the Large C&I Program and the Government Building/Municipal Program, as well as the C&I market transformation efforts described in more detail in Section II.C. below, as described in the March 26, 2004 Filing are approved for operation during the Pre-Approval Period. The total amount of expenditures which are subject to pre-approval as recoverable for the Pre-Approval Period for the Company's C&I energy efficiency effort shall be \$1,254,876. A summary of these expenditures for the C&I programs is included in Exhibit One.
- C. Market Transformation Initiatives. The Settling Parties agree that the Company's residential and C&I energy efficiency programs will assist in market

transformation that can help "create long-term changes that reap continuous energy efficiency savings at low cost." Electric Industry Restructuring, D.P.U. 96-100, at 67 ("D.P.U. 96-100").¹ The Settling Parties anticipate that utility-sponsored market transformation initiatives will continue to become more refined as the Pre-Approval Period progresses. In addition, the Settling Parties recognize that, in addition to more traditional energy efficiency efforts (for example, involving audits and the installation of qualifying measures), the Department has endorsed market-driven energy efficiency initiatives that are designed to take advantage of "market opportunities for more efficient use of energy at a time when it is most practicable and inexpensive to do so, such as during new construction, renovation, equipment replacement or at the time of purchase of new equipment."

Id; see also Boston Gas Company, D.P.U. 94-109 (Phase II), at 6, Interim Order on Gas Demand Side Management (1996); Western Massachusetts Electric Company, D.P.U. 96-8-CC, at 7 (1996). In order to address these directives during the Pre-Approval Period, the Company will undertake the market transformation initiatives described in the March 26, 2004 Filing.

These initiatives include, without limitation, collaborating with third-party finance companies to provide low-interest loans for the Company's residential and C&I customers; sponsoring educational and training efforts, including Massachusetts Building Code Support; and sponsoring regional GasNetworks® programs. Such GasNetworks® programs are detailed in the March 26, 2004

¹ In D.P.U. 96-100, the Department defined market transformation initiatives to mean "strategic efforts to offset market failures and to induce lasting structural or behavioral changes that result in increases in the adoption or penetration of energy efficient technologies or practices."

Filing and include: 1) the Residential High Efficiency Heating Rebate Program, 2) the Residential High Efficiency Water Heating Rebate Program, 3) the Residential ENERGY STAR Thermostat Rebate Program, 4) the ENERGY STAR Homes Program, 5) the C&I Infrared Rebate Program, 6) the C&I High Efficiency Heating Rebate Program, 7) the C&I High Efficiency Water Heating Rebate Program, 8) the C&I ENERGY STAR Thermostat Program, 9) the C&I Efficient Food Service Equipment Rebate Program, and 10) the ENERGY STAR Windows Program.

In the event the Company undertakes incremental market transformation initiatives beyond those set forth herein, the Company proposes to be granted the right, without the need for further pre-approval, to reallocate up to forty-five percent (45%) of the annual budget for its Residential and C&I energy efficiency programs to such new initiatives. Nothing in the foregoing shall preclude the Company from expending additional funds as is expressly allowed in Paragraph II.G. below. The Company's decision to make an incremental expenditure and/or to reallocate its budget as provided in this Paragraph II.C shall be based on the justification that incremental expenditure and/or reallocation is in the best interest of the Company's energy efficiency and market transformation programs and the Company's customers. Provided, however, that any such reallocation involving more than forty-five percent (45%) of the applicable program budget shall require the approval of the Department. Consistent with the practice in the D.T.E. 01-29 Settlement and the D.P.U. 01-29 Settlement, the Company also seeks to continue the discretionary flexibility to refine or enhance programs and reallocate monies

away from measures/programs it deems to be non-cost-effective (or less cost-effective than alternatives) or toward programs it deems relatively more beneficial without advance notice to the Department, provided that any such refinement, enhancement or reallocation does not exceed twenty-five percent (25%) of the applicable budget for either of the residential or C&I energy efficiency efforts described above and, provided further, that no funds shall be transferred away from low-income programs without ninety (90) days notice to LEAN and the express approval of the Department after public notice and the opportunity to be heard.

The Settling Parties agree that implementation of the energy efficiency and market transformation initiatives listed above are in the best interests of the Company's customers because of the benefits available in terms of 1) market transformation; 2) quality of service provided to customers; 3) increased customer satisfaction and awareness; 4) the potential effect on customer productivity and competitiveness; 5) the potential for these efforts to further economic development within the Commonwealth of Massachusetts; and 6) the potential, though not quantified, long- and short-term environmental benefits associated with the implementation of the market transformation/market-driven energy efficiency initiatives. See Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U. 95-95 Settlement at 5; see also D.P.U. 95-114 Settlement at 12. The Company's total market transformation recoverable expenditure budget for the five-year Pre-Approval period requested in the March 26, 2004 filing is \$1,604,411 (\$1,103,415 in the residential sector and \$500,996 in the C&I sector).

A summary of these expenditures is included in Exhibit One.

- D. In each year of the Pre-Approval Period, the Company will file an informational annual summary report with the Department and the DOER including a description of the levels of savings (to the extent determinable), participation and spending for such programs and whether the Company plans to allocate or reallocate funds to measures/programs it deems to be more beneficial to customers in accordance with this Section II. A template of the reporting format to be used is attached as Exhibit Two. This annual report will be submitted sixty (60) days after the close of the twelve-month reporting period. The Company will also submit interim informational status reports to the Department and the DOER on a six and nine month basis for each year during the Pre-Approval Period and will include information concerning the participation and expenditures by program. A template for these informational six and nine month reports is also included in Exhibit Two. These six- and nine-month reports will be submitted forty-five (45) days after the close of the six- and nine-month reporting periods.
- E. The Settling Parties agree that the implementation of the Company's residential and C&I energy efficiency programs, and the Company's market transformation initiatives will: result in benefits to all customers; reflect the particular circumstances of the Company and its customers; further the Department's objectives in terms of continuing market-driven energy efficiency and market transformation efforts in a competitive environment; and continue the Company's current existing energy efficiency effort, with the appropriate enhancements and flexibility described herein. The Settling Parties further agree that the energy

efficiency programs provided for in this Settlement serve important societal goals and directly respond to the policy goals of the Department and the DOER.

- F. The Company has both the authority and the responsibility to monitor and evaluate, on an on-going basis, the effectiveness and cost-effectiveness of its programs in accordance with the Final Cost-Effectiveness Screening Guidelines adopted by the Department in D.T.E. 98-100 on February 7, 2000. Based upon its ongoing review of cost-effectiveness of its programs, the Company may determine whether to reallocate monies away from measures/programs set forth in Paragraphs II.A., II.B. and II.C. above, toward programs and measures that it deems are relatively more beneficial for customers. The Company's decision to reallocate its budget shall be based on the justification that reallocation is in the best interest of the Company's energy efficiency and market transformation programs and the Company's customers. Except for reallocations regarding market transformation initiatives (which are expressly provided for in Paragraph II.C above), any such reallocation involving over twenty-five percent (25%) of the overall budget for either the residential energy efficiency programs or the C&I energy efficiency programs shall require the approval of the Department, provided, however, that no funds shall be transferred away from low-income programs without ninety (90) days notice to LEAN and the express approval of the Department after public notice and the opportunity to be heard. Exhibit Three contains a brief description of the cost-effectiveness screening method used by the Company in developing the March 26, 2004 Filing as well as plans for a C&I program savings evaluation collaborative effort that the Company will participate

in during the Pre-Approval Period.

- G. During the Pre-Approval Period, the Company may expend, and seek recovery of, funds for its energy efficiency programs, including market transformation/market-driven energy efficiency initiatives, in addition to or in excess of the pre-approval amounts set forth in Paragraphs II.A., II.B. and II.C. above, if such additional expenditures are cost-effective or if, in its discretion, the Company determines that such additional expenditures are in the best interests of the Company's energy efficiency programs and the Company's customers based upon then current circumstances; provided, however, that, while the other Settling Parties shall consider in good faith any such additional expenditures, the other Settling Parties shall not be bound to support the recovery of such additional expenditures unless in their respective discretions, the Company has shown the cost-effectiveness or benefits of such additional expenditures.
- H. Cost recovery, including recovery of lost margins (subject to the Rolling Period Methodology) and incentives, shall continue through the conservation charge ("CC") decimal mechanism as approved and found reasonable in the D.T.E. 01-29 Settlement, the D.T.E. 98-95 Settlement, the D.P.U. 96-92 Settlement, the D.P.U. 94-168 Settlement and D.P.U. 91-154 Settlement. The Company will collect lost margins for savings resulting from the residential and C&I energy efficiency and market transformation programs as set forth in the March 26, 2004 Filing, but will not collect lost margins for savings resulting from educational/training market transformation initiatives described in Paragraph II.C. above (i.e. the Massachusetts Building Code Support Program and similar purely

educational and training efforts). The Company shall have the right to propose lost margin recovery with respect to new market transformation initiatives during the term of the Pre-Approval Period and be eligible for such recovery for such new market transformation initiatives provided that it can present quantifiable savings projections with respect thereto which are approved by the Department. The Company shall be eligible to earn incentives with respect to its energy efficiency efforts in accordance with the methodology set forth in the March 26, 2004 Filing, which methodology is expressly derived from and based upon §5 of the Department's D.T.E. 98-100 Final Guidelines with respect to shareholder incentives. In this regard, Exhibit Four sets forth an updated Attachment E (Goals and Incentives) to be used during the Pre-Approval Period, that includes a savings-based incentive for certain non-market transformation efforts. The Settling Parties have agreed not to foreclose an incentive structure for low-income programs that includes goals other than direct therm savings for future years in the Pre-Approval Period.

- I. The Settling Parties agree that the energy efficiency programs (including market transformation initiatives) provided for in this Settlement serve societal goals and respond to the policy goals of the Department and DOER. The Settling Parties also agree that such energy efficiency programs are appropriately undertaken by the Company at this time in light of its current role in the increasingly more competitive natural gas industry.

III. CONDITIONS OF SETTLEMENT

- A. This Settlement shall not be deemed in any respect to constitute an admission by

any party as to the merits of any allegation or contention in this proceeding. The making of this Settlement establishes no principles or precedent and shall not be deemed to foreclose any party from making any contention in any future proceeding, except as to those issues that are resolved by approval of this Settlement Agreement.

- B. Other than as expressly stated herein, the acceptance of this Settlement shall not in any respect constitute a determination by the Department as to the merits of any allegations, contentions, or issues made in this or any subsequent proceeding.
- C. This Settlement is expressly conditioned upon the Department's approval of all provisions herein, without change or condition, by no later than September 15, 2004.
- D. The discussions (including work-papers, documents, etc. produced in connection therewith) which have produced this Settlement have been conducted with the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, and shall be without prejudice to the position of any party presenting such offer or participating in any such discussion, and are not to be used in any manner in connection with these or other proceedings involving any of the parties to this Settlement or otherwise.

- E. This Settlement is submitted on the condition that, in the event the Department does not approve of it in its entirety, it shall be deemed withdrawn and void and shall not constitute any part of the record in this proceeding or be used for any other purpose.
- F. This Settlement constitutes the entire agreement between the parties regarding the subject matter hereof. All previous agreements, discussions, communications, and correspondence regarding the subject matter hereof are superseded by the execution of this Settlement.

G. In support of this Settlement, the parties hereby move that all documents filed by the Company (including the March 26, 2004 Filing and this Settlement Agreement) in this proceeding be admitted into the record of this proceeding.

THE BERKSHIRE GAS COMPANY
TELECOMMUNICATIONS

DEPARTMENT
OF
AND ENERGY
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Dated: As of August 12, 2004

Exhibit One
Program Budgets

Exhibit One-A

Low-Income Program Enhancements

- 1) Eligibility for Low-Income Programs. In the event that in any given program year during the Pre-Approval Period, the Company is not spending or does not reasonably expect to spend the full amount of its Residential Low-Income Program budget by serving customers on its residential low-income rate, the Company will expand eligibility for participation in its Residential Low-Income Program to include residential customers with an annual income at or below sixty percent (60%) of the state median income. Screening for such eligibility shall be carefully conducted by the applicable low-income agency implementing the Program. Arrearages for any then current customer of the Company will not disqualify that customer from participation in the program; inactive or shut-off customers are not eligible for program participation. The Settling Parties stipulate and agree that the foregoing arrangement does not create any precedent whatsoever with respect to ratemaking or rate design matters, including without limitation eligibility criteria for the Company's low-income rate(s) and no party shall cite this arrangement in support of any proposed or advocated change to the Company's rates, including without limitation eligibility for low-income rates. The possible or continued use of the sixty percent (60%) of state median income criterion for eligibility for participation in the Low-Income Program will be re-examined on an annual basis at the end of each program year based on the totality of circumstances then being experienced in the field, including without limitation, participation levels in the Low-Income Program and actual and projected expenditures compared with pre-approved Low-Income Program budget levels. Based upon such re-examination, this criterion may, as applicable, be suspended or implemented for the applicable upcoming program year.
- 2) Low-Income Program Measures and Pricing. The Company will offer the measures indicated on Attachment A at the prices indicated on Attachment A in connection with its Residential Low-Income Program. (Prices for measures currently offered by the Company will be effective as soon as reasonably practicable following the execution of this Agreement; prices for any measure not currently offered by the Company shall be effective upon the Department's approval of this Settlement.) These prices will not be increased by the implementing low-income agencies (including the Low-Income Intervenors) prior to July 1, 2006. The prices for such measures may change on July 1, 2006 and every two years thereafter only pursuant to a competitive RFP process conducted under the supervision of the Department of Housing and Community Development (or a successor agency) in which the Company is eligible to actively participate, and provided further that all applicable measures continue to be cost-effective. To the extent the Company does not have savings data or estimates with respect to any measure on Attachment A, it is authorized to utilize the savings data or estimates for any such measure accepted or approved by the Department for any other Massachusetts local distribution company or electric company.

With respect to the measures listed on Attachment A, the Settling Parties further agree that:

- ?? Heating system replacements and repairs will be eligible measures provided that cost-effectiveness is established in accordance with the Department's guidelines. The Company contribution for any repair will be capped at five hundred dollars (\$500) per unit.
- ?? With respect to the miscellaneous repair measure indicated on Attachment A, lead

vendor approval of the applicable repair work will be required in every case (or Company approval in lieu thereof if no lead vendor is active for the Company) and there will be a five hundred dollar (\$500) cap for this measure per household and an overall annual cap on such measures set at two percent (2%) of the Company's annual budget for low-income measures. This two percent (2%) annual cap will be re-examined on an annual basis at the end of each program year based on actual in-the-field data and discussions with LEAN. Based upon such re-examination, this cap may be adjusted for the applicable upcoming program year. In addition, any repair funded by the Company must be projected to yield cost-effective savings or to enable the installation of other cost-effective savings measures (including the cost of such repair in such calculations).

?? The Company will account separately (price and savings) for air sealing and the enumerated measures (door kits and sweeps, automatic sweeps, window weatherstrip, sash locks, glass lites) listed on Attachment A, under the "Misc" heading.

- 3) Best Practices Task Force. During the Pre-Approval Period, the Company will participate, with no incremental cost, charge or obligation, in the Low-Income Best Practices Task Force currently constituted of representatives of LEAN and the Commonwealth's electric energy efficiency program administrators.
- 4) Re-Allocation. Subject to satisfactory cost effectiveness screening, the Company will re-allocate within the low-income budget \$20,000 to cost-effective heating system measures.

Exhibit Two
Reporting Template

Exhibit Three

Description of Cost-Effectiveness Screening Used in the Company's March 26, 2004 Filing

I. Summary of Cost-Effectiveness Screening

Summary Description of Cost-Effectiveness Screening Used in the Company's March 26, 2004 Filing

The Programs contained and described in the Company's Five Year Energy Efficiency Plan proposal were screened using the Total Resource Cost ("TRC") test in compliance with DTE 98-100.

To achieve this task, the Company, in collaboration with other gas local distribution companies ("LDCs") in the Commonwealth, and with the assistance of an independent third party, developed a template to define and establish certain common assumptions² and values for screening the energy efficiency programs. These common assumptions and values were then used as inputs into a regionally accepted TRC Screening Tool/Model³ along with company-specific anticipated program activity and assumptions over the next five years. As such, the Company's programs, and degree of cost effectiveness are comparable to many other gas energy efficiency programs offered in the Commonwealth.

A summary of the company-specific and regional program cost-effectiveness screening results may be found in the Attachment C of Company's March 26, 2004 filing. All proposed programs were found to be cost-effective.

II. C&I Program Savings Evaluation Collaborative

In the first year of the Pre-Approval Period, the Company will participate with New England Gas Company, NSTAR Gas Company and Bay State Gas Company, and staff members of the DOER and DTE to review methodologies for the calculation of savings from non-market transformation programs in the C&I sector. Such collaborative will seek to compare the outputs of various C&I savings calculation methodologies employed by the particular LDCs using case studies where appropriate. The collaborative will seek to identify any significant differences in outputs and develop an understanding of any differences and the reasons for them. The collaborative will review any possible enhancements to applicable methodologies for use on a going-forward basis. The Settling Parties agree that the focus of the collaborative shall be on prospective actions and that the Company (and other LDCs) have utilized approved methodologies for calculating C&I savings in the past and such calculations shall not be required to be restated or altered as a result of the collaborative. Additionally, the Settling Parties agree that there can be sound reasons for the use of different methodologies for calculating C&I savings among different companies (e.g., differences in program structure, company infrastructure, existing databases, etc.). The Settling Parties will consider and balance the benefits and costs of determining differences or similarities in calculation methodologies. While all participants in the collaborative will consider the results in good faith, no participant in the collaborative will be compelled to agree that any one statewide C&I savings calculation method must, or should be utilized

² Common assumptions include energy savings values for regional programs/measures, the life expectancy of those regional measures, avoided costs, interest rates, etc.

³ A description of the screening tool/model may be found in Attachment C of the Company's March 26, 2004 Filing.

on a prospective basis.

Exhibit Four
Updated Goals and Incentives

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